

**STATE OF RHODE ISLAND    CITY OF EAST PROVIDENCE  
COUNTY OF PROVIDENCE    APPELLATE BOARD OF REVIEW**

**MINUTES**

**A meeting of the East Providence Appellate Board of Review was held at 8:00 P.M., on Wednesday, 2 March 2016, in the City Council Chambers, East Providence City Hall.**

**The following members were present:**

**Eugene Saveory – Chairman**

**Michael Beauparlant – Vice-Chairman - ABSENT**

**John Braga - ABSENT**

**Pier-Mari Toledo**

**Antonio H. Cunha**

**Richard Croke, Sr. – 1st Alternate**

**Gary Pascoa – 2nd Alternate**

**Edward Pimentel – Zoning Officer / Clerk**

**Gregory Dias – Assistant City Solicitor**

**I. OPENING STATEMENT BY CHAIRMAN**

**Chairman Saveory announces that the Zoning Board of Review will**

now be reconvening as an Appellate Board, following the respective procedures. He requests that the Zoning Officer first provide some insight, prior to calling up the appellant.

Zoning Officer explains the situation that resulted in the present appeal. A Certificate of Zoning was requested for sales purposes, documenting the presence of two-units. The normal course of investigating the legality of usage entails reviewing all zoning history (if any), building permit history (if any) and tax assessment history. After completing the research, it was still inconclusive as to the nature of the two-unit – whether pre-existing or not. It was clear that the two-unit had been present for many years, as supported by the Tax Assessment history, however it was not clear as to whether it was present since minimally 1966. Therefore, a site inspection was arranged to help in concluding legal and/or pre-existing usage. Upon arriving at the property it was clear that something was amiss, because the first-floor had been completely gutted to the studs – meaning that there was neither a kitchen nor bathroom present. Furthermore, no permits have been obtained to document the prior status of the property – evidencing the pre-existing presence of the two-units. It was impossible to document age of fixtures and improvements because nothing was present. He had to therefore legally conclude – even if pre-existing – that there was an intent to abandon the grandfathered rights due to the actions observed. He proceeds to read the language regarding abandonment directly from the Zoning Ordinance.

Zoning Officer continues by acknowledging that there is ample evidence, including tax assessments records and other documentation provided by the property owner, to support the long-standing presence of a pre-existing two-unit residence. However, given the actions taken by the prior property owner – actions that were not supported by the proper obtainment of a building permit, his hand were tied. He therefore recommended that the petitioner pursue an appeal, because under the present circumstances, a use variance would never be obtained.

Gail Genard, 74 Appian Way, East Providence, RI, subject realtor, is properly sworn in.

Dorothy Visinho, 37 Martello Street, East Providence, RI, subject property owner, is properly sworn in.

Ms. Genard explains that her client and family were pursuing purchase of a two-unit residence. In speaking to the realtor representing the property owner, they were informed that the residence at 173 Leonard Avenue was a two-unit residence, and was being marketed as such. When they inspected they were informed that the property owner has started to gut the first-floor in anticipation of upgrading. However, he became ill and subsequently ended up in a nursing home where he passed away. The heirs did not have an interest in improving the property or maintaining it in general, and simply wanted to unload the home. The current property

owners were qualified for a two-unit rehab loan from Navigant Bank, who likewise inspected it and deemed it an appropriate rehab situation. They are therefore seeking permission to retain the grand-fathered two-unit status, arguing that the rights were not lost. The stated interruption resulted from the illness of the original property owner, and therefore the improvements were never completed.

Chairman Saveory queries the Board, beginning with Mr. Croke.

Mr. Croke notes that he conducted a site inspection and there appears to be a singular gas meter. Ms. Genard responds that there are two (2), but have not been connected awaiting the outcome of this appeal. Ms. Visinho concurs, noting that there is two (2) hook-ups present.

Mr. Croke inquires if the reason for the height is to accommodate storage? Mr. Cassola responds in the negative, noting that there is no provision for upper storage. The reason for the height was consideration for snow build-up, and to match the architectural detail – maintaining a similar pitch – of his home.

Mr. Croke then inquires about the number of doorbells present, noticing a singular doorbell. Ms. Visinho responds that there are two (2) doorbells on the rear of the residence.

**Mr. Croke proceeds to state that he noticed a singular electric meter, phone and cable box, and one dryer vent. Ms. Visinho responds that much of that is to do with the gut job and their inability to reintroduce until the outcome of this hearing. They did not want to start using it as a two-unit and further violate the law.**

**Mr. Croke notes for the record that it is well documented that the prior owner, Mr. White, gutted the residence, and it is now conjecture as to his future plans to reintroduce the two-units.**

**Mr. Croke then inquires as to how long after gutting the first-floor, did the property remain abandoned. Ms. Genard responds that she does not no. It is unclear as to the timeframe between the death of the property owner and marketing it for sale.**

**Mr. Croke inquires if anyone is presently residing on the second-floor? Ms. Visinho responds in the negative. Ms. Genard also notes that as soon as there was any question regarding legality of the two-unit, even though they were considering an appeal – they removed the second-floor kitchen-unit.**

**Mr. Croke inquires if the property has been rehabbed, and if so, were permits properly obtained? Ms. Visinho responds in the affirmative. Ms. Toledo inquires if the rehab loan took into consideration improvements on the second-floor? Ms. Genard responds in the negative, noting that the second-floor did not require any**

improvement. The only modifications were those resulting from the determination of the Zoning Official, which resulted in extinguishing the second-floor kitchen-unit.

Ms. Toledo notes that she is well aware of many instances in which a two-unit residence, especially the much-older residences, are improved with a singular electric meter, etc.

Mr. Cunha inquires if the second-floor kitchen-unit was fairly new or somewhat dated? Zoning Officer responds that it was somewhat dated and intact. It was the condition of the first-floor that resulted in his determination regarding loss of grand-fathered rights, because he legally had no other option.

Mr. Cunha inquires if it is the determination of the Zoning Officer – gutting job aside – that there were two-units present? Zoning Officer responds in the affirmative, noting that although not unique to find a second kitchen in the lower (basement) level – unique to find a second kitchen on the second-floor, if it were not a two-unit.

Mr. Cunha notes for record that although inappropriate and he is no condoning as an excuse, many people start to rehab their property without first obtaining the necessary permits. His concern was whether a two-unit was in fact present. He fully understands the predicament under which the Zoning Officer was placed, and eventual determination. However, does this arise to the level of complete loss

**of one's grand-fathered rights?**

**Mr. Cunha inquires if the appellant was aware of the zoning limitations when they purchased the property? Ms. Visinho responds that she understood the risk, but given all of the documented evidence of a pre-existing two-unit and knowledge that there was never any actual desire to eliminate it, as well as need to move her daughter out of an unsafe living arrangement and back into the City of East Providence, she concluded that she needed to proceed with the purchase.**

**Mr. Pascoa notes that he does not have any questions and/or comments at this time.**

**Chairman Saveory inquires if the petitioner already has an electrical hook-up for a second-unit? Ms. Visinho responds that one has always been present in the lower-level. There are two (2) electrical boxes present. Just awaiting zoning permission to reintroduce the meter.**

**Chairman Saveory inquires if the prior owner had obtained any permits for the demo work discussed? Zoning Officer responds in the negative, noting that it places a tremendous burden on the City to then conclude legal usage. If there simply had been a permit obtained, he could have concluded differently. Ms. Genard adds that there is also tax assessment and Polk directory data to corroborate**

**the presence of the two-unit residence.**

**Mr. Croke inquires if the subject property has been on the tax rolls as a two-unit for many years? Zoning Officer responds in the affirmative.**

**Zoning Officer advises the Board, after conferring with the Solicitor, that the motion to be made will be as follows:**

**Motion to overturn the Zoning Officer's determination that the two-unit has been abandoned, concludes that there has been sufficient evidence entered into the record that there was no intent to abandon their pre-existing legal non-conforming rights.**

**Motion to overturn the Zoning Officer's determination that the two-unit has been abandoned, concludes that there was not sufficient evidence entered into the record, and therefore the pre-existing legal non-conforming rights were abandoned.**

**Motion by Mr. Pascoa, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:**

**That the Zoning Board of Review overrule the decision of the Zoning Officer for the following reasons:**



**1. The Zoning Officer could not have reached any other conclusion based on what he observed during the testified to site inspection and fact that no permits had been obtained.**

**2. Regardless, given the vast documentation provided, it is rather clear that a two-unit residence had been present for many years.**

**3. Furthermore, although not excusing failure to obtain the necessary demo permit, it can be concluded that the desire was to rehab, and not extinguish, the two-unit residence.**

**The motion is Seconded by Ms. Toledo.**

**Roll Call Vote:**

**Mr. Pascoa - Aye**

**Mr. Croke - Aye The Zoning Officer's testimony was very revealing regarding the long-usage of the property as a two-unit residence, especially the length of time for which the property has been assessed as such.**

**Ms. Toledo - Aye Concurs with Mr. Croke's comments. Would also note that**

**there has been sufficient evidence to document that there was no intent to abandon.**

**Mr. Cunha - Aye The testimony of both the Zoning Officer and**

**appellant**

**has convinced me that there was a pre-existing legal  
non-conforming two-unit, and no desire to abandon.**

**Chairman Saveory - Aye The submitted exhibits are overwhelmingly  
in support  
of the appellant's argument. Also, the neighborhood  
analysis evidences that this was developed as a multi-unit  
neighborhood prior to the adoption of the zoning  
regulations.**

**Zoning Officer's decision is hereby unanimously overruled.**

**Zoning Officer notes for the record that he will detail all of the  
submitted documents within the formal decision as evidence of the  
Board's conclusion that there was no desire to abandon.**

## **IX. PROCEDURES**

**Zoning Officer informs the Board that a recording secretary has been  
approved, and will be present starting in April. Also, there has been a  
series of zoning amendments before the Council that should be  
approved shortly.**

**Also the Solicitor provided a recent determination of the Ethics Board  
regarding an open meetings violation in Bristol, RI. He can assure  
the Board that they have always properly prepared their notices, both**

for advertising and to the public.

## **X. ANNOUNCEMENTS**

**Chairman Saveory announces that the next meeting of the Zoning Board of Review is scheduled for Wednesday, 6 April 2016, at 7:00 PM, in the City of East Providence Council Chambers, City Hall, East Providence, RI.**

## **XI. ADJOURNMENT**

**Motion to adjourn by Mr. Croke. The motion is Seconded by Ms. Toledo and Unanimously voted to adjourn. Meeting is adjourned at 8:30 P.M.**

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**Edward Pimentel, AICP**  
**Zoning Officer / Clerk**

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**Secretary**